

SERVICE AGREEMENT BETWEEN THE CITY OF SUNNYVALE  
AND CONSOLIDATED ENGINEERING LABORATORIES  
FOR CONTRACT COMPLIANCE INSPECTION SERVICES

THIS AGREEMENT dated 12-19-00 is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and CONSOLIDATED ENGINEERING LABORATORIES, a California corporation ("CONTRACTOR").

WHEREAS, CITY is in need of contract compliance inspection services; and

WHEREAS, CONTRACTOR possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONTRACTOR

CONTRACTOR shall provide services in accordance with Exhibit "A" attached and incorporated by reference. The parties agree that the nature of the services to be performed by CONTRACTOR necessitate that CONTRACTOR be provided office space on CITY's premises. CITY, therefore, agrees to furnish space on its premises for use by CONTRACTOR while performing these services.

2. Time for Performance

The term of this Agreement shall be two years from the date of Agreement execution, unless otherwise terminated. CONTRACTOR shall deliver the agreed upon services to CITY as specified in Exhibit "A". Extensions of time may be granted by the City Manager upon a showing of good cause.

3. Duties of CITY

CITY shall supply any documents or information available to City required by CONTRACTOR for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay CONTRACTOR at the rates specified in Exhibit "B" attached and incorporated by reference. Total compensation shall not exceed Two Hundred Thousand and no/100 Dollars (\$200,000.00). CONTRACTOR shall submit invoices to CITY to be paid in accord with the procedures set forth in Exhibit "B".

5. Ownership of Documents

CITY shall have full and complete access to CONTRACTOR's working papers, drawings and other documents during progress of the work. All documents of any description prepared by CONTRACTOR shall become the property of CITY at the completion of each project.

6. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement, CONTRACTOR shall not accept employment or an obligation which is inconsistent or incompatible with CONTRACTOR's obligations under this Agreement.

7. Confidential Information

CONTRACTOR shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONTRACTOR may become aware in the performance of its services.

8. Compliance with Laws

- (a) CONTRACTOR shall strictly adhere to all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual on the basis of race, color, religion, gender, sexual orientation, marital status, national origin, age or disability.
- (b) CONTRACTOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

9. Independent Contractor

CONTRACTOR is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONTRACTOR. CONTRACTOR is responsible for paying all required state and federal taxes.



To CONTRACTOR: Jim Backman, Vice President  
Northern California Operations  
CONSOLIDATED ENGINEERING LABORATORIES  
7060 Koll Center Parkway, Suite 300  
Pleasanton, CA 94566-3108

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

15. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

16. Termination

If CONTRACTOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONTRACTOR. If CITY fails to pay CONTRACTOR, CONTRACTOR at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

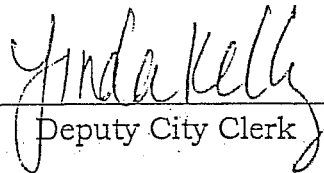
18. Miscellaneous

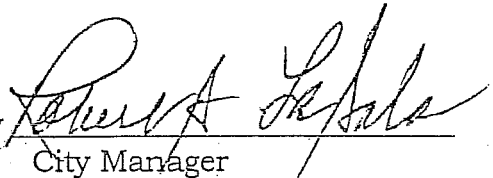
Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:


CITY OF SUNNYVALE ("CITY")

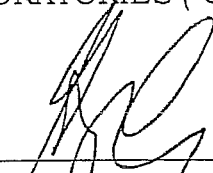
By   
Deputy City Clerk

By   
City Manager

APPROVED AS TO FORM:

CONSOLIDATED ENGINEERING  
LABORATORIES ("CONTRACTOR")

By   
City Attorney

By   
Gary M. Lapp, CEO  
Name and Title

By \_\_\_\_\_  
\_\_\_\_\_  
Name and Title

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

CONTRACTOR shall provide "on-call" construction inspection services as required and upon request from the City of Sunnyvale.

Inspection shall consist of visual observation of materials, equipment or construction work for the purpose of ascertaining that the work is in substantial conformance with the contract documents. Such inspection shall not be relied upon by others as acceptance of the work nor shall it be construed to relieve the contractor in any way from his obligations and responsibilities under the construction contract. Specifically, but without limitation, inspection shall not require the inspector to assume responsibilities for the means and methods of construction nor for safety on the jobsite.

CONTRACTOR's employees shall complete and submit any and all forms and reports required by CITY.

**EXHIBIT "B"**  
**COMPENSATION**

CONTRACTOR shall be compensated by CITY on a time and expenses basis at the following hourly rates:

Straight Time	\$47.00
Work over 8 hours per day or on Saturdays	\$65.50
Work on Sundays/Holidays	\$84.00
Swing or Graveyard Shift Premium	\$52.00

Minimum Billing:	
Work from 0-4 Hours	4 Hour Minimum
Work from 4-8 Hours	8 Hour Minimum
Show-Up Time	2 Hour Minimum

Out of Area Services	Quoted Upon Request
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CITY shall compensate CONTRACTOR at the above rates for any and all hours CONTRACTOR's employees may be required to attend specialized training due to hazardous materials encountered on a CITY project site.

The above rates will be in effect through March 1, 2002. Thereafter, the unit rates are subject to an increase of 5 percent (5%) per year.

Payment will be made within thirty (30) days of receipt of an accurate, itemized invoice.

**EXHIBIT "C"**  
**INSURANCE REQUIREMENTS**

CONTRACTOR shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance and endorsements to the City of Sunnyvale Purchasing Division.

CONTRACTOR shall take out and maintain during the life of the contract **Workers' Compensation and Employer's Liability Insurance** for its employees. The amount of insurance shall not be less than \$1,000,000 per accident for bodily injury or disease.

CONTRACTOR shall take out and maintain during the life of the contract such **Commercial General Liability Insurance** as shall protect CONTRACTOR, CITY, its officials, officers, directors, employees and agents from claims which may arise from services performed under the contract, whether such services are performed by CONTRACTOR, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from CONTRACTOR's or CITY's operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of CITY.
- Notice of cancellation to CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

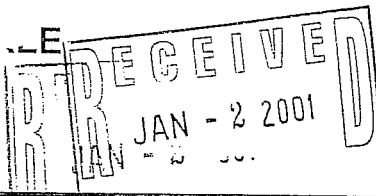
- The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated.



- CITY must be named as additional named insured with respect to the services being performed under the contract.
- The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.



CITY OF SUNNYVALE  
CALIFORNIA



BLANKET ORDER NO 24853-B

<b>ORDERED FROM</b> 00447-001  CONSOLIDATED ENGINEERING LABORATORIES ATTN JIM BACKMAN VP 7060 KOLL CENTER PKWY STE 300 PLEASANTON CA 94566-3108	By _____ 925-485-5000	<b>ORDER DATE</b> 12/28/2000	<b>BILL TO:</b>  City of Sunnyvale Finance Department Accounts Payable PO Box 3707 Sunnyvale CA 94088-3707
		<b>START DATE</b> 12/19/2000	
		<b>END DATE</b> 12/31/2002	
		<b>BID/RFQ NO</b> F0009-27	
<b>DELIVER TO</b> PW/ENGINEERING 456 W OLIVE AVE SUNNYVALE CA 94086		<b>FOB</b>	<b>FREIGHT CHARGES</b>
		<b>PAYMENT TERMS</b> NET 30	<b>REQUISITIONER</b> GREG JONES X7618
		<b>PR NO</b> 5384	<b>CHARGE/OBJ CODE(S)</b> VARIOUS
<b>OTHER DEPTS/DIVISIONS AUTHORIZED TO USE THIS ORDER</b>			<b>THIS ORDER SUPERSEDES PO NO</b> 24786-B

DESCRIPTION

Provide contract compliance inspection services for the Department of Public Works Engineering Division for a two-year period in accordance with the Service Agreement, dated December 19, 2000, a copy of which is attached and incorporated by reference.

Contract awarded by Council November 14, 2000 (RTC #00-380).

Total contract amount not to exceed \$200,000.00

All invoices shall reference this purchase order number.

BUYER

David Gakle Phone (408) 730-7403 Fax (408) 730-7710

DEPARTMENT